

SUBJECT: GRATUITOUS FUNERAL SERVICES PROVIDED TO GOVERNMENT PERSONNEL WHO ARE KILLED IN THE LINE OF DUTY

SUMMARY: A PRIVATE DONOR MAY PROMISE AND PROVIDE GRATUITOUS FUNERAL SERVICES TO SURVIVING FAMILY MEMBERS AND/OR THE ESTATE OF DESIGNATED PUBLIC EMPLOYEES WHO ARE KILLED IN THE LINE OF DUTY PROVIDED THE PROMISE IS NOT INTENDED TO INFLUENCE OFFICIAL DUTIES, IS NOT AN HONORARIUM OR PAYMENT FOR SERVICES RENDERED IN THE ORDINARY COURSE OF EMPLOYMENT, AND ALSO PROVIDED THAT ANY PUBLICITY OF SUCH PROMISE BE OUTSIDE THE SCOPE OF OFFICIAL PUBLIC BUSINESS ACTIVITIES.

QUESTION: The issue is whether a private firm may promise and publicly announce its intention to donate gratuitous funeral services that will benefit family survivors and/or the estates of designated public employees who are killed in the line of their public service. A private funeral home wants to promise and announce publicly its intention to provide gratuitous funeral services to certain law enforcement, fire fighting, and emergency medical personnel when they are killed in the course of their public servant duties.¹

DISCUSSION:

The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 2-17-5 et. seq. and Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. An opinion rendered by the Commission until amended or revoked is binding on the Commission in any subsequent charges concerning the person who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person in the request for the opinion. Identities of parties involved must be withheld upon request.

¹ As to the federal officers who are mentioned in connection with the donor's offer, the State Ethics Commission has no jurisdiction over such employees, and thus, advises that the appropriate office of ethics be contacted for advice.

In general, no public employee, official, or member may accept or solicit and no person may offer or pay money for advice or assistance in addition to that which is received in the course of one's employment. *See, §8-13-720.*² The purpose of §8-13-720 is to prevent the public employee, official, or member from being paid twice for the same work. For example, in State Ethics Commission (SEC) advisory opinion AO96-004, the SEC stated that a DSS public employee could not accept money from a private corporation in addition to that received in her official capacity for services rendered in the ordinary scope of assigned responsibilities.

² Section 8-13-720 of the Ethics Reform Act provides:

No person may offer or pay to a public official, public member, or public employee and no public official, public member, or public employee may solicit or receive money in addition to that received by the public official, public member, or public employee in his official capacity for advice or assistance given in the course of his employment as a public official, public member, or public employee.
S.C. Code Ann. §8-13-720 & (Cum. Supp. 1997).

Also, the Ethics Reform Act prohibits anything of value (unless exempted by statute) from being offered, promised, given, accepted, or solicited, whether directly or indirectly, if the intention is to influence one's official duties. See, §8-13-705.³ The purpose of this statute is to prevent one from being swayed in the discharge of one's official responsibilities and from dividing loyalties in service to two masters. "Anything of value" includes a promise to make a gift and a gift itself.⁴

³ **§8-13-705. Offering, giving, soliciting, or receiving anything of value to influence action of public employee, member or official, or to influence testimony of witness; exceptions; penalty for violation.**

(A) A person may not, directly or indirectly, give, offer, or promise anything of value to a public official, public member, or public employee with the intent b

(1) influence the discharge of a public official's, public member's, or public employee's official responsibilities;

(2) influence a public official, public member, or public employee to commit, aid in committing, collude in, or allow fraud on a governmental entity; or

(3) induce a public official, public member, or public employee to perform or fail to perform an act in violation of the public official's, public member's, or public employee's official responsibilities.

(B) A public official, public member, or public employee may not, directly or indirectly, knowingly ask, demand, exact, solicit, seek, accept, assign, receive, or agree to receive anything of value for himself or for another person in return for being:

(1) influenced in the discharge of his official responsibilities;

(2) influenced to commit, aid in committing, collude in, allow fraud, or make an opportunity for the commission of fraud on a governmental entity; or

(3) induced to perform or fail to perform an act in violation of his official responsibilities.

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(F) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than b

years and a fine of not more than ten thousand dollars and is permanently disqualified from being a public official or a public member. A public official, public member, or public employee who violates the provisions of this section forfeits his public office, membership, or employment.

S.C. Code Ann. §8-13-705(A)-(C) & (F) & (Cum. Supp. 1997).

⁴ Section 8-13-100(1)(a)(iii) defines "anything of value" to include a promise and a gift.

"(iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money."

S.C. Code Ann. §8-13-100(1)(a)(iii) & (Cum. Supp. 1997).

Therefore, a promise to provide free funeral services is "anything of value" under the Ethics Reform Act. In prior opinions, the SEC has distinguished between gifts of money and value made to employees for their usual and ordinary responsibilities and those made to reward public servants for honorable service when there was no prior expectation of return consideration by recipients.

The instant situation is similar to one reviewed by the State Ethics Commission in 1992. In SEC AO92-084, an offer to give free or discounted rent to law enforcement employees was examined. The Commission opined that "[s]uch free or discounted rent can be construed to be payment for such security measure." Thus, the donor and donee must insure that the gift is for legitimate security measures given outside the scope of the law enforcement employee's regular duties and is not a means of providing financial support in addition to the employee's regular duties and pay.⁵

In contrast, in SEC AO79-033, the inquiry was whether a police officer could accept reward money from the U.S. Postal Service for apprehending an offender attempting to rob a post office. The police officer's usual position responsibilities included enforcement of law at all times. Since apprehension of an offender attempting to rob a post office would be within his usual position responsibilities as a police officer, the Commission advised the employee not to accept any reward monies generated by such an arrest.

When the reward monies are to be paid to a state agency as opposed to an individual public employee, then the monies may be accepted. In SEC AO92-122, the State Ethics Commission advised that a sheriff's department could continue to collect reward monies for apprehension of fugitives, since the public agency was the recipient, not individuals. The Commission opined that the Ethics Act does not cover public agencies, but rather affects individual public employees, officials, or members.

⁵ If the reward is for assistance outside the scope of the usual job responsibilities, then the money may be accepted. In SEC 87-016, a city firefighter was advised that rewards could be accepted for providing information gained through off-duty employment on a matter of arson, because the employee's usual responsibilities did not include arson investigation or apprehension.

Rewards and gifts for honorable service may be given to individuals by either a public agency employer or by a private donor when the recipients are chosen by neutral selection devices, there is no appearance of an attempt to influence official responsibilities, and provided that the monetary payments and gifts are not for services rendered in the ordinary course of one's responsibilities. The award must not be given for any action or ordinary performance of specific advice or assistance rendered in the ordinary course of the employee's position responsibilities.⁶

Since this offer to make a gift in reality will pertain to the private donor and potential donee family, there actually is no relationship between or through a government agency. Therefore, a private donor's promise to provide gratuitous funeral services that will inure to family survivors and/or the estate of those designated public employees, officials, and members is permissible under the Ethics Reform Act and advisory opinions, provided that (1) there is no intent to influence the performance of official duties; (2) the gift is not an honorarium for services performed or to be performed by individual public employees in the ordinary course of their employment; and (3) no government resources will be involved, either in the announcements, decisions, or communication of this offer. Thus, the decision of the private donor to make this gift will be at the donor's independent determination. The Commission advises that the donor and beneficiaries avoid the appearance of impropriety or the appearance of an attempt to influence with respect to favorable treatment in the rendering of escort services, speeding tickets, or funeral home referrals.

PRIOR OPINIONS:	SEC 79-033	SEC AO92-122
	SEC 87-016	SEC AO95-011
	SEC 90-005	SEC AO96-004
	SEC 90-030	SEC AO97-004
	SEC AO92-084	

SECTIONS:	§8-13-705	§8-13-720
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KEY WORDS:	Honoraria Gift
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⁶ In both SEC 90-005 and SEC 90-030, the State Ethics Commission permitted state employees to receive cash awards provided the gift guidelines were followed. In a recent advisory opinion, the Commission advised the Charleston Exchange Club that it could give and the selected employees could accept, a cash award to honor law enforcement officers and/or firefighters injured in the line of duty based on the gift criteria test. *See*, SEC AO97-004. The gift may not be an honorarium paid for ordinary services rendered. *See*, SEC AO95-011.